

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 14, 2009 has been entered.

Claim Rejections - 35 USC § 102/103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 22-24 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 00/65140 issued to Matsunaga et al. as set forth in section 2 of the last Office Action (Final Rejection mailed 05/04/2009).

4. Claims 22-24 stand rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US 2003/0152743 issued to Matsunaga et al. as set forth in section 3 of the last Office Action. [Note US 2003/0152743 is the English language equivalent of the Japanese language WO 00/65140.]

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Applicant has not amended the claims to overcome the prior art. Rather, applicant traverses by arguing Matsunaga does not inherently disclose a yarn with the claimed properties (Remarks, page 2, 3rd paragraph). Specifically, applicant argues the Mito Declaration under 37 CFR 1.132 filed February 13, 2009, shows that a yarn produced by a one-step process according to the Matsunaga reference does not necessarily possess the claimed breaking strength (Remarks, page 2, 4th paragraph). While the examiner acknowledges the data from the specific working examples in said Declaration, said data is not sufficient evidence to show that such a one-step process cannot inherently produce a yarn with the recited properties. For example, applicant's own working examples presented in the specification show that a one-step process can inherently produce yarns possessing the claimed properties. See Example 12 and Comparative Example 3 of the specification. This conflicting evidence suggests that there are other factors dependent upon producing the claimed yarn properties other than merely recited two-step process.

Additionally, applicant argues the recited process limitations should be given patentable weight in that said Declaration shows the properties of a yarn produced from a two-step process differs from those of a yarn produced from a one-step process (Remarks, page 3, 1st paragraph). While the data of said Declaration is not disputed, it does not establish significant differences are obtained by one process over another. In other words, a change in a process variable is expected to produce a slight change in the product. However, it is not clear said process should be given patentable weight, since the specification evidences said difference in properties is not necessarily due to the difference in said process variable. Once again, note Example 12 and Comparative Example 3, which produce yarns having the presently claimed properties by a one-step process like that disclosed by the prior art.

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Applicant disagrees that Example 12 contradicts the evidence of the Declaration (Remarks, page 3, 2nd paragraph). Specifically, applicant asserts the yarn of Example 12 has inferior properties to that of Example 1, which further shows the claimed process conditions should be given patentable weight (Remarks, page 3, 2nd paragraph). This argument is unpersuasive since Example 1 is not what is being claimed. It is reiterated that the yarn of Example 12, which is obtained by a one-step drawing process, has a crimp elongation, shrinkage rate, and breaking strength within the ranges claimed.

Therefore, applicant's arguments are found unpersuasive and the above rejections stand.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner can be emailed at cheryl.juska@uspto.gov or the examiner's supervisor, D. Lawrence Tarazano can be reached at 571-272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cheryl Juska/
Primary Examiner
Art Unit 1794

cj
December 24, 2009